

REMARKS

Applicant is in receipt of the Office Action mailed January 13, 2004. Claims 169, 206-207, and 221 have been cancelled, and so their rejections have been rendered moot. Claims 167, 170, 178-188, 190-202, 212, 214, 216-220, 222, 230-241, 255, 256, 259-261, 264, 268, 270, 272, 274, 275, 277-282, and 284 have been amended to more clearly represent the invention as claimed. Claims 167, 168, 170-205, 208-220, 222-243, 245-262, 264-282, and 284 remain pending in the case. Further consideration of the present case is earnestly requested, in light of the following remarks.

Section 112 Rejections

The Office Action stated that claims 167-218, 241, and 255 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which application regards as the invention; however, the Office Action only presents grounds for the rejection regarding claims 167-218, particularly, the insufficient antecedent basis for the limitation “the new graphical program”. Applicant notes that claims 241 and 255 do not have this antecedent basis error, and has provisionally assumed that these claims were not rejected under section 112, second paragraph. If this is not correct, Applicant respectfully requests clarification regarding the 112 rejection of claims 241 and 255.

Applicant has amended independent claim 167 to correct the antecedent basis error, and respectfully requests removal of the section 112 rejection of claim 167, and claims dependent thereon.

Amendments to the claims

Applicant has amended each of the independent claims to recite: *wherein the graphical program comprises a plurality of interconnected nodes which model the program execution logic and data flow or control flow*. In other words, the graphical program comprises a plurality of interconnected nodes, wherein the plurality of interconnected nodes are the “code”, or source code, of the program which specifies the execution of the program, e.g., using either data flow or control flow. Stated another

way, as may be seen in Figures 27A and 27B, the interconnected nodes of the graphical program visually indicate the functionality of the graphical program.

Applicant has also amended the term “graphical program objects” to “graphical program nodes” to clarify the distinction between text programming language based software objects, such as C++ objects or Java objects, as taught in Sojoodi, and graphical program elements contained in a graphical program. Also, the claims have been clarified to recite that “programmatically creating the new graphical program” comprises programmatically creating a plurality of graphical program nodes and programmatically interconnecting the plurality of graphical program nodes. This distinguishes over the method taught in McDonald, which involves selecting a pre-existing graphical program template.

Section 102 Rejections

The Office Action rejected claims 272-282 under 35 U.S.C. 102(e) as being anticipated by Sojoodi et al (“Sojoodi”, USP 6437805). Applicant respectfully disagrees.

As the Examiner is certainly aware, anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Amended claim 272 recites:

272 A system for programmatically creating a graphical program, comprising:
a computer system including a CPU and memory;
a client program executing in the computer system, wherein the client program performs API calls to programmatically create a graphical program; and
a server program operable to receive the client program calls to programmatically create the graphical program, wherein, in programmatically creating the graphical program, the server program is executable to:

programmatically create a plurality of graphical program nodes in the new graphical program; and

programmatically interconnect the plurality of graphical program nodes in the new graphical program, wherein the interconnected plurality of graphical program nodes comprise at least a portion of the new graphical program; and

wherein the new graphical program comprises a plurality of interconnected nodes which model the program execution logic and data flow or control flow.

Applicant notes that the cited column 5, lines 28-30 of Sojoodi states “The present invention comprises a system and method for creating a graphical program, wherein the graphical program is operable to access capabilities of an object”, but does not describe *programmatically creating the graphical program via execution of a client program, where the graphical program comprises a plurality of interconnected nodes which model the program execution logic and data flow or control flow*. Sojoodi does not disclose programmatically creating the graphical program. More specifically, Sojoodi does not disclose a client-called server program which is executable to *programmatically create a plurality of graphical program nodes in the new graphical program, and programmatically interconnect the plurality of graphical program nodes in the new graphical program*.

Furthermore, the cited column 4, lines 43-53 of Sojoodi describes *accessing* software objects that are provided by a server, but again, does not describe programmatically creating a graphical program, e.g., via execution of a client program (and/or server program). In fact, Sojoodi specifically describes creating a graphical program in response to user input, i.e., *not* programmatically. In other words, Sojoodi specifically does not teach executing a first graphical program to programmatically create a new graphical program.

Moreover, the software objects of Sojoodi are objects in an object-oriented or component sense, but are not properly graphical program objects or nodes, as described in the present application. For example, in column 4, line 54 – column 5 line 7, example objects include Active X objects, such as Microsoft Excel objects, Microsoft Access® objects, and Microsoft Word objects, OpenDoc® objects, and Common Object Request

Broker Architecture (CORBA) objects. Further examples described include C++ and JAVA objects. Note that none of these software objects is a graphical program object or node as defined in the present application.

Applicant respectfully submits that Sojoodi does not teach or suggest Applicant's invention as represented in claim 272. Thus, for at least the reasons provided above, Applicant respectfully submits that claim 272, and claims dependent thereon, are patentably distinct over Sojoodi, and are thus allowable. Removal of the 102 rejection of claim 272, and claims dependent thereon, is respectfully requested.

The Office Action further rejected claim 281, also citing column 5, lines 28-32, as well as column 38, lines 55-59, column 6, lines 21-22, and column 6, lines 15-17.

Amended claim 281 recites:

281. A memory medium comprising a client program for programmatically creating a new graphical program, wherein the client program comprises:

a means for programmatically instantiating the new graphical program;

a means for programmatically creating a node in the new graphical program;

a means for getting or setting properties of the new graphical program or the node;

a means for programmatically invoking methods on the new graphical program or the node;

where the graphical program comprises a plurality of interconnected nodes which model the program execution logic and data flow or control flow.

As noted above, column 5, lines 28-32 of Sojoodi describes manual creation of a graphical program which is operable to access capabilities of an object, but does not describe programmatically creating the graphical program via execution of a client program, *where the graphical program comprises a plurality of interconnected nodes which model the program execution logic and data flow or control flow.* Column 38, lines 55-59 describes manually adding items to the property node, where the properties node has been manually included in a graphical program for accessing a software object.

Column 6, lines 21-22 describes an application object and a manually included object node which is executable to initiate execution of the application or to get/set properties of the application. Finally, column 6, lines 15-17 describes a software object that is an application or other re-usable software component. Nowhere does Sojoodi teach or suggest that the object is a graphical program element or node. Additionally, Applicant submits that the amended claim 281, which emphasizes programmatic instantiating, programmatic adding a node, and programmatic invocation of methods, is patentably distinct over Sojoodi for at least the reasons provided above with reference to claim 272.

Thus, Applicant respectfully submits that claims 272 and 281, and claims respectively dependent thereon, are allowable. Removal of the 102 rejection of these claims is respectfully requested.

Section 103 Rejections

Claims 167-241, 255-262, 264-271, and 284-285 were rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald et al. ("McDonald", USP 5,966,532) and Sojoodi. Applicant respectfully disagrees.

To establish a prima facie obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP 2143.03. Obviousness cannot be established by combining or modifying the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion or incentive to do so. In re Bond, 910 F. 2d 81, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990).

Furthermore, as held by the U.S. Court of Appeals for the Federal Circuit in *Ecolochem Inc. v. Southern California Edison Co.*, an obviousness claim that lacks evidence of a suggestion or motivation for one of skill in the art to combine prior art references to produce the claimed invention is defective as hindsight analysis.

In addition, the showing of a suggestion, teaching, or motivation to combine prior teachings "must be clear and particular Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence'." In re Dembiczak, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). The art must fairly teach or suggest to

one to make the specific combination as claimed. That one achieves an improved result by making such a combination is no more than hindsight without an initial suggestion to make the combination.

Applicant respectfully submits that neither Sojoodi nor McDonald provides a motivation to combine, and so the references are not properly combinable to establish an obviousness rejection. Applicant further notes that even if Sojoodi and McDonald were combinable, which Applicant argues they are not, the resulting combination would not teach Applicant's invention as claimed, as discussed in more detail below.

Amended claim 167 recites:

167. A computer-implemented method for programmatically creating a graphical program, comprising:

creating a first program, wherein the first program is executable to programmatically create a new graphical program;

executing the first program, wherein said executing comprises programmatically creating the new graphical program, wherein said programmatically creating the new graphical program comprises:

programmatically creating a plurality of graphical program nodes in the new graphical program; and

programmatically interconnecting the plurality of graphical program nodes in the new graphical program;

wherein the interconnected plurality of graphical program nodes comprise at least a portion of the new graphical program;

wherein the new graphical program comprises a plurality of interconnected nodes which model the program execution logic and data flow or control flow.

Applicant submits that McDonald teaches a wizard that selects a graphical code template in response to user selection of a user interface control, and includes the template in a graphical program, where the graphical code template corresponds to the selected control, and operates in conjunction with the control. In other words, the wizard

selects a graphical code template in response to (and corresponding to) a user-selected user interface control, and inserts the template into the graphical program.

Nowhere does McDonald teach or suggest “creating a first program, wherein the first program is executable to programmatically create a new graphical program”, nor executing the first program to programmatically create the new graphical program, including programmatically creating a plurality of graphical program nodes in the new graphical program, and programmatically interconnecting the plurality of graphical program nodes in the new graphical program. The graphical code templates selected in McDonald have preconfigured nodes and interconnections, and hence McDonald does not perform, and has no reason to perform, any programmatic creation or interconnection of nodes.

Applicant further submits that McDonald’s template-based system for selecting graphical code templates corresponding to user-selected user interface controls is quite limited in the graphical code portions it can provide, whereas Applicant’s system is capable of programmatically generating graphical programs of various types of desired functionality.

Applicant respectfully submits that neither Sojoodi nor McDonald, either singly or in combination, teaches all of the limitations and features of independent claims 167, 219, 256, and 264, and thus, these claims, and those claims dependent thereon, are patentable distinct over Sojoodi and McDonald, and thus allowable for at least the reasons provided above. Removal of the section 103 rejection of these claims is respectfully requested.

Regarding claims 241 and 284, the Office Action asserts that McDonald teaches a first program, when executing, programmatically creating a new graphical program, citing col. 3, lines 61-63, and further asserts that while McDonald does not teach that the first program is a first graphical program and the creating a new graphical program by creating graphical program nodes and by interconnecting these created graphical program nodes, that these features are taught by Sojoodi, citing col. 5, lines 40-47. Applicant respectfully disagrees.

In the cited passage and elsewhere, Sojoodi describes *the user* placing nodes in the graphical program, and *the user* interconnecting the nodes to create the graphical program. In other words, in Sojoodi, the creation of the graphical program is performed manually, and is specifically not performed programmatically via execution of a first graphical program, as represented in claims 241 and 284.

Thus, Applicant submits that neither McDonald nor Sojoodi, either singly or in combination, teaches or suggests all of the features and limitations of claims 241 and 284, and thus Applicant submits that claims 241 and 284, and those claims dependent thereon, are patentably distinct and non-obvious over the cited art, and are thus allowable for at least the reasons provided above. Removal of the section 103 rejection of these claims is respectfully requested.

Applicant also asserts that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the independent claims have been shown to be patentably distinct, a further discussion of the dependent claims is not necessary at this time.

CONCLUSION

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-37301/JCH.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☒ Notice of Change of Address

Respectfully submitted,



Jeffrey C. Hood
Reg. No. 35,198
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert & Goetzel PC
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8800
Date: 4/13/2004